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# HOUSE BILL No. 1604

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-9-23; IC 6-9-33; IC 10-18-2; IC 36-10-15.

**Synopsis:** Fort Wayne capital improvement board. Establishes a capital improvement board for Fort Wayne. Provides for a board of managers composed of appointees by the mayor, the city council, and the county board of commissioners. Provides that the supplemental coliseum expansion (food and beverage tax) fund is controlled by the board instead of the county and must still be used for the coliseum as provided in the Allen county supplemental food and beverage tax law. Provides that the World War Memorial Coliseum is a joint county-city memorial under the World War Memorial law. Provides that the Fort Wayne capital improvement board serves as the board of trustees for the World War Memorial Coliseum under the World War Memorial law. Repeals superseded provisions.

**Effective:** June 1, 2009; July 1, 2009.

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January 16, 2009, read first time and referred to Committee on Local Government.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1604

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-9-33-5 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2009]: Sec. 5. The county supplemental food  
3 and beverage tax imposed on a food or beverage transaction described  
4 in section 4 of this chapter may not exceed one percent (1%) of the  
5 gross retail income received by the merchant from the transaction. For  
6 purposes of this chapter, the gross retail income received by the retail  
7 merchant from such a transaction does not include the amount of tax  
8 imposed on the transaction under IC 6-2.5. ~~or IC 6-9-23.~~  
9 SECTION 2. IC 6-9-33-8 IS AMENDED TO READ AS FOLLOWS  
10 [EFFECTIVE JULY 1, 2009]: Sec. 8. If a tax is imposed under section  
11 3 of this chapter, the county treasurer shall establish a supplemental  
12 coliseum improvement fund. The county treasurer shall deposit in this  
13 fund all amounts received from the tax imposed under this chapter.  
14 Money in this fund may be ~~appropriated~~ **used by the Fort Wayne**  
15 **capital improvement board, created by IC 36-10-15**, only:  
16 (1) for acquisition, improvement, remodeling, or expansion of; or  
17 (2) to retire or advance refund bonds issued, loans obtained, or

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1 lease payments incurred under IC 36-1-10 (referred to in this  
2 chapter as "obligations") to remodel, expand, improve, or acquire;  
3 an athletic and exhibition coliseum in existence before the effective  
4 date of an ordinance adopted under section 3 of this chapter.

5 SECTION 3. IC 6-9-33-9 IS AMENDED TO READ AS FOLLOWS  
6 [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) The ~~county~~ **Fort Wayne**  
7 **capital improvement board, created by IC 36-10-15**, may enter into  
8 an agreement under which amounts deposited in, or to be deposited in,  
9 the supplemental coliseum expansion fund are pledged to payment of  
10 obligations issued to finance the remodeling, expansion, or  
11 maintenance of an athletic and exhibition coliseum under section 8 of  
12 this chapter.

13 (b) Obligations entered into for the acquisition, expansion,  
14 remodeling, and improvement of an athletic and exhibition coliseum  
15 shall be retired by using money collected from a tax imposed under this  
16 chapter.

17 (c) With respect to obligations for which a pledge has been made  
18 under subsection (a), the general assembly covenants with the holders  
19 of these obligations that:

20 (1) this chapter will not be repealed or amended in any manner  
21 that will adversely affect the imposition or collection of the tax  
22 imposed under this chapter; and

23 (2) this chapter will not be amended in any manner that will  
24 change the purpose for which revenues from the tax imposed  
25 under this chapter may be used;

26 as long as the payment of any of those obligations is outstanding.

27 SECTION 4. IC 10-18-2-2 IS AMENDED TO READ AS  
28 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A county may  
29 through its county executive acquire by:

30 (1) purchase;

31 (2) donation; or

32 (3) condemnation;

33 suitable real estate to construct and maintain structures to  
34 commemorate the bravery, courage, valor, and sacrifice of the soldiers,  
35 sailors, and marines of the United States and of all others who rendered  
36 faithful, loyal, heroic, and self-sacrificing service at home or overseas  
37 in World War I.

38 (b) At a world war memorial, a county may do the following:

39 (1) Provide a place for meetings and headquarters for  
40 organizations of active or retired military personnel or any other  
41 patriotic associations.

42 (2) Provide storage for the keeping of records, archives,

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documents, flags, mementos, and relics.

(3) Provide space for public meetings and for other public purposes.

(4) Inculcate an understanding and appreciation of the duties, benefits, and privileges of American citizenship.

(5) Inspire patriotism and respect for the law to the end that peace may prevail.

(6) Promote good will and justice.

(7) Perpetuate liberty and freedom.

(c) In addition to the powers provided under subsections (a) and (b), a county may do the following:

(1) Acquire by purchase, donation or condemnation any interest in real property to be dedicated by the county and added to any real property that is dedicated by the state for World War Memorial and other public purposes, by proper contract, deed, or grant. The real property acquired shall be conveyed by the county to the state for World War Memorial and other public purposes as provided in the contract, deed, or grant.

(2) Join with any city located in the county to acquire by purchase, donation, or condemnation, interests in real property to be dedicated by the county and the city jointly and added to any real property that is dedicated by the state for World War Memorial and other public purposes, by proper contract, deed, or grant. The real property acquired shall be conveyed by the county and city jointly to the state for World War Memorial purposes and other public purposes as provided in the contract, deed, or grant.

(3) Join with any city located in the county to:

(A) acquire by purchase, donation, or condemnation interests in real property;

(B) construct and maintain on the real property a joint city and county World War Memorial; and

(C) use the real property for other public purposes as provided in this chapter.

**(d) With respect to the World War Memorial Coliseum located in Allen County, after June 30, 2009, the Memorial shall be considered a joint county and city memorial for purposes of this chapter.**

SECTION 5. IC 10-18-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) If a county has appropriated money to be used by the county executive under this chapter, the county executive may enter into a contract with any city located in the county for the joint acquisition of real estate for a world

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war memorial.

(b) Contracts between counties and cities for the joint acquisition of real estate for developing a world war memorial shall be made through the city's board of public works with the approval of the mayor.

(c) If a county executive decides to contract with a city for the joint acquisition of real estate and development of a world war memorial, the county executive shall adopt a resolution signifying their desire and send a certified copy of a resolution to the mayor of the city. The mayor shall refer the resolution to the board of public works for action. Within sixty (60) days after the receipt of the resolution, the board of public works shall determine by resolution whether or not the city will join with the county in the execution of any contract for any purpose authorized by this chapter.

(d) If a county and city agree to join in the acquisition of real estate to be dedicated for a world war memorial as authorized by this chapter, the county executive shall execute a contract between the county and the city describing the real estate and interests in the real estate to be acquired jointly and the costs for the county and the city. The contract shall be executed in duplicate and shall be included in the minutes of the proceedings of the county executive and of the board of public works of the city.

(e) If a county and city agree to establish a joint world war memorial, then the county executive, acting for the county, and the board of public works, **or in the case of the World War Memorial Coliseum located in Allen County, the Fort Wayne capital improvement board created by IC 36-10-15**, with the approval of the mayor, shall execute a contract between the county and city that must provide the following:

(1) For the acquisition of real estate and the construction of a joint world war memorial suitable for the county and city.

(2) The respective parts of the total cost of the world war memorial that shall be paid by the county and by the city and the time and manner of the payments.

(3) That the acquisition of real estate and the execution of all necessary contracts for the construction of the joint world war memorial shall be made by a board of trustees consisting of five (5) members to be appointed and have the powers and perform the duties as provided in this chapter.

(4) That the total costs of the acquisition of the real estate for the joint world war memorial and the construction of the world war memorial may not exceed the amount of money appropriated by the county executive and the common council of the city.

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(5) That the necessary cost and expenses for the management, maintenance, repairs, and improvement of the memorial shall be paid by the county and city in the same proportion that they contribute to the establishment of the memorial.

(6) That the contract may contain any other terms, conditions, and provisions that may be agreed upon between the county and city, not inconsistent with this chapter.

(f) The county shall pay its part due under any contract executed by the county with any city within the county under this chapter from:

(1) the general funds of the county; or

(2) the proceeds of bond issue as provided in this chapter.

(g) The county, acting through its county executive, may issue and sell bonds for the purpose of raising funds to pay its part of the cost under any contract executed by the county with any city located within the county under this chapter.

(h) The county executive shall issue and sell the necessary bonds and levy and collect the necessary taxes to pay the bonds as they mature, together with interest, all as authorized in this chapter.

SECTION 6. IC 10-18-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) If a county enters into a contract with any city for the establishment of a joint county and city world war memorial, as provided in this chapter, there is established a board of trustees that consists of five (5) members, to be known as "Trustees of the World War Memorial for the County of \_\_\_\_\_ and the City of \_\_\_\_\_", giving the name of the county and the name of the city. **However, in the case of the World War Memorial Coliseum in Allen County, the Fort Wayne capital improvement board created by IC 36-10-15 shall serve as the board of trustees under this chapter.**

(b) The trustees shall be appointed as follows:

(1) Three (3) trustees shall be appointed by the county executive of the county.

(2) Two (2) trustees shall be appointed by the mayor of the city.

(c) One (1) of the trustees appointed by the mayor shall be appointed for a term of two (2) years and one (1) for a term of three (3) years. Subsequently, the trustees shall be appointed by the mayor for a term of three (3) years. Two (2) of the trustees appointed by the county executive shall be appointed for a term of two (2) years and one (1) for a term of three (3) years. Subsequently, the trustees shall be appointed by the county executive for a term of three (3) years.

(d) The trustees shall be selected without regard to their political affiliations. Not more than three (3) trustees may be of the same

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political party. The mayor may not appoint more than one (1) trustee from any political party. The county executive may not appoint more than two (2) trustees from any political party.

(e) The board of trustees must be persons of high standing and character and serve without compensation but may receive reimbursement for any reasonable expenses necessarily incurred by them in the performance of their duties.

(f) The mayor or county executive may, for just cause, based upon written charges specifically alleging the misconduct, remove any member appointed by the mayor or county executive, after notice to the trustee board and a public hearing.

(g) In case of vacancy caused by removal or otherwise, the mayor or the county executive making the original appointment shall appoint a qualified person to fill the unexpired term.

(h) Each trustee shall do the following:

(1) Execute a bond to the county and city in the sum of five thousand dollars (\$5,000), conditioned for the faithful performance of duties as a trustee, with sureties to be fixed and approved by the judge of the circuit court.

(2) Take an oath that the trustee will support the Constitution of the United States and the Constitution of the State of Indiana and will faithfully discharge all of the duties as a trustee. The oath shall be endorsed on the bond, and the bond and oath shall be filed with the clerk of the circuit court.

(i) If a joint county and city world war memorial is established, the board of trustees shall have all the powers and perform all the duties in relation to the acquisition of the ground and the construction of the joint county and city world war memorial as provided in this chapter to be done and performed by the county executive in relation to a county world war memorial.

(j) If a joint county and city world war memorial is established, all money appropriated by the county and the city shall be disbursed upon estimates submitted by the board of trustees and certified to the proper officers of the county and city as provided for in the contract between the county and city.

(k) A board of trustees may not be established if a county contracts with a city located in the county to jointly acquire real estate and interests in the real estate to be dedicated and added to an existing war memorial operated by the state.

SECTION 7. IC 10-18-2-16, AS AMENDED BY P.L.113-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) A county executive, acting jointly with the

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board of public works of a city located in the county, **or in the case of the World War Memorial Coliseum located in Allen County, the Fort Wayne capital improvement board created by IC 36-10-15**, to acquire grounds, real property, and interests in real property, by purchase or condemnation for any of the purposes authorized by this chapter, may proceed under IC 32-24, together with all the powers of eminent domain granted under this chapter.

(b) Before a county executive may purchase real property or interests in real property, by the county, jointly by the county and a city located in the county, by the county executive or board of trustees, as provided in section 11 of this chapter, or by the county executive acting jointly with the board of public works of any city located in the county, the county executive must have the real property appraised at its true cash value by at least:

(1) one (1) disinterested freeholder of the county; and

(2) two (2) disinterested appraisers licensed under IC 25-34.1; who are residents of Indiana. One (1) of the appraisers described in subdivision (2) must reside not more than fifty (50) miles from the property. The county executive may not pay more than the appraised value for any real property and interests in real property.

(c) If an owner refuses to sell real property at the appraised value, the property must be acquired by condemnation. If a county acts alone, an attorney representing the county shall conduct all the legal proceedings necessary in the purchase or condemnation of real property. The legal department of a city and an attorney representing the county, if the county and city act jointly under this chapter, shall conduct all the necessary legal proceedings, without additional compensation, for the purchase or condemnation of real property.

(d) If a county acquires real property for any of the purposes provided for by this chapter or joins with a city located in the county in the acquisition of real property for any of the purposes provided for in this chapter, the county, acting by and through its county executive, or the county, by and through its county executive acting jointly with any city located in the county, by and through its board of public works, with the approval of the mayor, may sell the buildings and improvements on the real property.

(e) The net rent or proceeds of the sale of the building and improvements on the real property at a war memorial, if the real property was acquired by the county, shall be added to and become a part of the county world war memorial fund. If the real property was acquired by the county and any city located in the county jointly, the rent and proceeds of sale shall be added to the county world war

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memorial fund and the city world war memorial fund in the same proportions that the city and county contributed to the acquisition of the real property, buildings, and improvements, or the county.

(f) The county and a city located in the county acting jointly, as provided in this chapter, may convey any real property acquired to the state. The contract with the state must provide for the rent of buildings and improvements on real property, until necessary to remove the buildings and improvements, and for the sale of the buildings and improvements if the real property is needed by the board of trustees for world war memorial and other public purposes. The contract must provide how the net rent or proceeds will be applied.

(g) If a county institutes proceedings to condemn any real property or interests in real property or other property under this chapter, the suit must be brought:

- (1) in the name of the county;
- (2) by an attorney representing the county; and
- (3) at the direction of the county executive.

(h) If the joint condemnation of real property under this chapter is by a county and by a city located in the county, the suit must be brought in the name of the county, as provided in this section, and in the name of the city by its legal department, without additional compensation, at the direction of the board of public works. The county, or the county and the city jointly, may:

- (1) join in one (1) action naming as defendants the owners and all persons interested in one (1) or more tracts of real property to be condemned; or
- (2) institute proceedings to condemn separate tracts of real property.

SECTION 8. IC 36-10-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 15. Fort Wayne Capital Improvement Board**

**Sec. 1. (a) This chapter applies to the city of Fort Wayne.**

**(b) Fort Wayne is uniquely positioned because of the following:**

- (1) The city is the second most populated city in the state and is located in the second most populated county in the state.**
- (2) The city is the major urban area and population center in the northeastern part of Indiana.**
- (3) The city has Interstate Highway 69 serving its residents and facilitating commerce and free travel within and through the midwestern United States.**
- (4) The city's residents have paid a substantial amount of food**

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and beverage taxes since 1986, which have been used to support an athletic and exhibition coliseum in the city.

(5) The city's residents have increasing needs for amenities such as recreational, cultural, and community facilities.

Sec. 2. As used in this chapter, "board" refers to a capital improvement board of managers created under this chapter.

Sec. 3. As used in this chapter, "city" refers to the city of Fort Wayne.

Sec. 4. As used in this chapter, "net income" means the gross income from the operation of a capital improvement after deducting the necessary operating expenses of the board.

Sec. 5. (a) A capital improvement board of managers is created in the city.

(b) The city may finance, construct, equip, operate, and maintain a capital improvement under this chapter.

(c) The supplemental coliseum improvement fund established as a county fund under IC 6-9-33-8 is hereby transferred to the authority and control of the board. The board succeeds the county with respect to all rights, entitlements, conditions, and limitations regarding the fund, including any debt obligations or notes issued under IC 6-9-33.

Sec. 6. (a) The board is composed of nine (9) members. Six (6) members shall be appointed by the mayor of the city, two (2) members shall be appointed by the board of commissioners of the county, and one (1) member shall be appointed by the legislative body of the city from among the members of the legislative body. One (1) of the members appointed by the mayor must be engaged in the hotel or motel business in the city. Not more than four (4) of the members appointed by the mayor may be affiliated with the same political party. Not more than one (1) member appointed by the board of commissioners may be affiliated with the same political party.

(b) The terms of members are for two (2) years beginning on January 15 and until a successor is appointed and qualified. A member may be reappointed after the member's term has expired.

(c) If a vacancy occurs on the board, the appointing authority shall appoint a new member. That member serves for the remainder of the vacated term.

(d) A board member may be removed for cause by the appointing authority who appointed the member.

(e) Each member, before entering upon the duties of office, shall take and subscribe an oath of office in the usual form. The oath

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1 shall be endorsed upon the member's certificate of appointment,  
2 which shall be promptly filed with the records of the board.

3 (f) A member does not receive a salary, but is entitled to  
4 reimbursement for any expenses necessarily incurred in the  
5 performance of the member's duties.

6 Sec. 7. (a) Immediately after January 15 each year, the board  
7 shall hold an organizational meeting. It shall elect one (1) of the  
8 members president, another vice president, another secretary, and  
9 another treasurer to perform the duties of those offices. The  
10 officers serve from the date of their election until their successors  
11 are elected and qualified.

12 (b) The board may adopt the bylaws and rules that the board  
13 considers necessary for the proper conduct of its duties and the  
14 safeguarding of the funds and property entrusted to its care. A  
15 majority of the members constitutes a quorum, and the  
16 concurrence of a majority of the members is necessary to authorize  
17 any action.

18 Sec. 8. The board may, acting under the title "capital  
19 improvement board of managers of Fort Wayne", do the following:

20 (1) Acquire by grant, purchase, gift, devise, lease,  
21 condemnation, or otherwise, and hold, use, sell, lease, or  
22 dispose of, real and personal property and all property rights  
23 and interests necessary or convenient for the exercise of its  
24 powers under this chapter.

25 (2) Construct, reconstruct, repair, remodel, enlarge, extend,  
26 or add to any capital improvement built or acquired by the  
27 board under this chapter.

28 (3) Control and operate a capital improvement, including  
29 letting concessions and leasing all or part of the capital  
30 improvement.

31 (4) Fix charges and establish rules governing the use of a  
32 capital improvement.

33 (5) Accept gifts or contributions from individuals,  
34 corporations, limited liability companies, partnerships,  
35 associations, trusts, or political subdivisions, foundations, and  
36 funds, loans, or advances on the terms that the board  
37 considers necessary or desirable from the United States, the  
38 state, and any political subdivision or department of either,  
39 including entering into and carrying out contracts and  
40 agreements in connection with this subdivision.

41 (6) Exercise within and in the name of the city the power of  
42 eminent domain under general statutes governing the exercise

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of the power for a public purpose.

(7) Receive and collect money due for the use or leasing of a capital improvement and from concessions and other contracts, and expend the money for proper purposes.

(8) Receive excise taxes, income taxes, and ad valorem property taxes and expend the money for operating expenses, payments of principal or interest of bonds or notes issued under this chapter, and for all or part of the cost of a capital improvement.

(9) Retain the services of architects, engineers, accountants, attorneys, and consultants and hire employees upon terms and conditions established by the board, so long as any employees or members of the board authorized to receive, collect, and expend money are covered by a fidelity bond, the amount of which shall be fixed by the board. Funds may not be disbursed by an employee or member of the board without prior specific approval by the board.

(10) Provide coverage for the board's employees under IC 22-3 and IC 22-4.

(11) Purchase public liability and other insurance considered desirable.

(12) Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including the enforcement of them.

(13) Sue and be sued in the name and style of "capital improvement board of managers of Fort Wayne", service of process being had by leaving a copy at the board's office.

(14) Prepare and publish descriptive material and literature relating to the facilities and advantages of a capital improvement and do all other acts that the board considers necessary to promote and publicize the capital improvement, including the convention and visitor industry, and serve the commercial, industrial, and cultural interests of Indiana and its citizens. The board may assist, cooperate, and fund governmental, public, and private agencies and groups for these purposes.

(15) Enter into leases of capital improvements and sell or lease property under IC 5-1-17.

Sec. 9. (a) The purchase or lease of material and work on a capital improvement shall be done by the board under statutes governing these activities by cities. However, if the total cost of

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1 construction or equipping of a capital improvement or of the  
 2 alteration, maintenance, or repair of any building is estimated to  
 3 be fifty thousand dollars (\$50,000) or less, the board may procure  
 4 materials and perform the work by its own employees and with  
 5 owned or leased equipment without awarding a contract. In  
 6 addition, in an emergency determined and declared by the board  
 7 and entered in its records, the board may make emergency  
 8 alterations, repairs, or replacements and contract for them without  
 9 advertising for bids.

10 (b) Title to or interest in any property acquired shall be held in  
 11 the name of the city, and the board has complete and exclusive  
 12 authority to sell, lease, or dispose of it and to execute all  
 13 conveyances, leases, contracts, and other instruments in connection  
 14 with it. However, real property may not be sold without the  
 15 approval of the mayor.

16 Sec. 10. (a) The board shall prepare a budget for each calendar  
 17 year covering the projected operating expenses, and estimated  
 18 income to pay the operating expenses, including amounts, if any, to  
 19 be received from excise taxes and ad valorem property taxes. It  
 20 shall submit the budget for review, approval, or rejection to the  
 21 city legislative body. The board may make expenditures only as  
 22 provided in the budget as approved, unless additional expenditures  
 23 are approved by the legislative body. However, payments to users  
 24 of any capital improvement that constitute a contractual share of  
 25 box office receipts are neither an operating expense nor an  
 26 expenditure within the meaning of this section.

27 (b) If the board desires to finance a capital improvement in  
 28 whole or in part by the issuance of bonds under this chapter, the  
 29 board shall submit the following information to the city legislative  
 30 body at least fifteen (15) days before the adoption of a resolution  
 31 authorizing the issuance of the bonds:

32 (1) A description of the project to be financed through the  
 33 issuance of bonds.

34 (2) The total amount of the project anticipated to be funded  
 35 through the issuance of bonds.

36 (3) The total amount of other anticipated revenue sources for  
 37 the project.

38 (4) Any other terms upon which the bonds will be issued.

39 (c) The city legislative body must discuss the information  
 40 provided in subsection (b) in a public hearing.

41 Sec. 11. (a) The treasurer of the board is the official custodian  
 42 of all funds and assets of the board and is responsible for their

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1 safeguarding and accounting. The treasurer of the board shall give  
 2 bond for the faithful performance and discharge of all duties  
 3 required of the treasurer by law in the amount and with surety and  
 4 other conditions that may be prescribed and approved by the  
 5 board. All funds and assets in the capital improvement fund and  
 6 the capital improvement bond fund created by this chapter and all  
 7 other funds, assets, and tax revenues held, collected, or received by  
 8 the treasurer of the county for the use of the board shall be  
 9 promptly remitted and paid over by the county treasurer to the  
 10 treasurer of the board, who shall issue receipts for them.

11 (b) The treasurer of the board shall deposit all funds coming  
 12 into the treasurer's hands as required by this chapter, IC 6-9-33,  
 13 and in accordance with IC 5-13. Money so deposited may be  
 14 invested and reinvested by the treasurer in accordance with  
 15 general statutes relating to the investment of public funds and in  
 16 securities that the board specifically directs. All interest and other  
 17 income earned on investments becomes a part of the particular  
 18 fund from which the money was invested, except as provided in a  
 19 resolution, ordinance, or trust agreement providing for the  
 20 issuance of bonds or notes. All funds invested in deposit accounts  
 21 as provided in IC 5-13-9 must be insured under IC 5-13-12.

22 (c) The board shall appoint a controller to act as the auditor and  
 23 assistant treasurer of the board. The controller shall serve as the  
 24 official custodian of all books of account and other financial  
 25 records of the board and has the same powers and duties as the  
 26 treasurer of the board or the lesser powers and duties that the  
 27 board prescribes. The controller, and any other employee or  
 28 member of the board authorized to receive, collect, or expend  
 29 money, shall give bond for the faithful performance and discharge  
 30 of all duties required of the controller in the amount and with  
 31 surety and other conditions that may be prescribed and approved  
 32 by the board. The controller shall keep an accurate account of all  
 33 money due the board and of all money received, invested, and  
 34 disbursed in accordance with generally recognized governmental  
 35 accounting principles and procedure. All accounting forms and  
 36 records shall be prescribed or approved by the state board of  
 37 accounts.

38 (d) The controller shall issue all warrants for the payment of  
 39 money from the funds of the board in accordance with procedures  
 40 prescribed by the board, but a warrant may not be issued for the  
 41 payment of a claim until an itemized and verified statement of the  
 42 claim has been filed with the controller, who may require evidence

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that all amounts claimed are justly due. All warrants shall be countersigned by the treasurer of the board or by the executive manager. Warrants may be executed with facsimile signatures.

(e) If there are:

- (1) bonds or notes outstanding issued under this chapter; or
- (2) bonds issued, loans obtained, or lease payments incurred under IC 36-1-10, as provided in IC 6-9-33 to remodel, expand, improve, or acquire an athletic and exhibition coliseum in the city;

the controller shall deposit with the paying agent or other paying officer within a reasonable period before the date that any principal or interest becomes due sufficient money for the payment of the principal and interest on the due dates. The controller shall make the deposit with money from the sources provided in this chapter and IC 6-9-33, and the controller shall make the deposit in an amount that, together with other money available for the payment of the principal and interest, is sufficient to make the payment. In addition, the controller shall make other deposits for the bonds and notes as is required by this chapter or by the resolutions, ordinances, or trust agreements under which the bonds or notes are issued.

(f) The controller shall submit to the board at least annually a report of the controller's accounts exhibiting the revenues, receipts, and disbursements and the sources from which the revenues and receipts were derived and the purpose and manner in which they were disbursed. The board may require that the report be prepared by an independent certified public accountant designated by the board. The handling and expenditure of funds is subject to audit and supervision by the state board of accounts.

Sec. 12. (a) Unless there are bonds or notes outstanding under this chapter and secured in whole or in part by money deposited in the supplemental coliseum expansion fund under IC 6-9-33 or the capital improvement bond fund, the proceeds of food and beverage taxes received from the county treasurer or treasurer of the state shall be deposited in a separate and distinct fund called the "capital improvement fund". The gross income received by the board from the operation of capital improvements under this chapter shall be deposited in the capital improvement fund, regardless of whether or not there are any bonds or notes outstanding. Any money in the fund may be expended by the board without the necessity of an appropriation to pay or provide for the payment of operating expenses. Money in the fund may also be

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1 used by the board without appropriation or approval to pay the  
 2 principal on, or interest of, any bonds or notes issued under this  
 3 chapter that cannot be paid from funds in the capital improvement  
 4 bond fund or may be used for the payment of the principal of,  
 5 redemption premium, if any, for, and interest on any bonds or  
 6 notes issued under this chapter, upon prior redemption, or for all  
 7 or part of the cost of a capital improvement.

8 (b) The board may covenant in any resolution, ordinance, or  
 9 trust agreement providing for the issuance of bonds or notes as to  
 10 the order of application of money deposited in the capital  
 11 improvement fund, including the holding or disposing of any  
 12 surplus in that fund.

13 (c) The net income from the operation of capital improvements  
 14 under this chapter shall be transferred from the capital  
 15 improvement fund to the capital improvement bond fund to the  
 16 extent of any deficiency in the amount required to be in the capital  
 17 improvement bond fund.

18 Sec. 13. (a) If there are bonds outstanding issued under this  
 19 chapter, the treasurer of the board shall deposit in a separate and  
 20 distinct fund called the "capital improvement bond fund" all tax  
 21 revenues received as provided by law, which are not otherwise  
 22 deposited in the supplemental coliseum expansion fund under  
 23 IC 6-9-33, until there are sufficient funds from those tax revenues,  
 24 the proceeds of the bonds, or both of these sources, in the capital  
 25 improvement bond fund to provide the amount required by the  
 26 resolution or resolutions or trust agreement or agreements  
 27 pursuant to which the bonds are issued. The treasurer of the board  
 28 shall then deposit sufficient tax revenues in the fund to maintain  
 29 such amounts in the fund as are required by the resolution or  
 30 resolutions or trust agreement or agreements. The various  
 31 accounts within the capital improvement bond fund shall be held  
 32 by the treasurer of the board or by an escrow agent, depository, or  
 33 trustee as may be provided in the resolution or resolutions or trust  
 34 agreement or agreements pursuant to which the bonds are issued.

35 (b) Any excess tax revenues not required by this section to be  
 36 deposited in the capital improvement bond fund shall be deposited  
 37 in the capital improvement fund, or, in the discretion of the board,  
 38 in any special fund that may be established by the board for the  
 39 payment of principal and interest on any bonds outstanding issued  
 40 under this chapter. Amounts in the capital improvement bond fund  
 41 shall be applied to the payment of principal of the bonds and the  
 42 interest on them and to no other purpose.

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1       **Sec. 14. (a) A capital improvement may be financed in whole or**  
 2 **in part by the issuance of bonds payable, to the extent stated in the**  
 3 **resolution or trust agreement providing for the issuance of the**  
 4 **bonds, solely from one (1) or more of the following sources:**

5       **(1) Net income received from the operation of the capital**  
 6 **improvement and not required to be deposited in the capital**  
 7 **improvement bond fund under section 11 of this chapter.**

8       **(2) Net income received from the operation of any other**  
 9 **capital improvement or improvements and not required to be**  
 10 **deposited in the capital improvement bond fund under section**  
 11 **11 of this chapter.**

12       **(3) Revenue from the food and beverage tax that is deposited**  
 13 **in the supplemental coliseum expansion fund under IC 6-9-33**  
 14 **and not otherwise pledged under IC 6-9-33 before July 1,**  
 15 **2009.**

16       **(4) Money in the capital improvement bond fund available for**  
 17 **that purpose.**

18       **(5) Money in the capital improvement fund available for that**  
 19 **purpose.**

20       **(6) Any other funds made available for that purpose.**

21       **The resolution or trust agreement may pledge all or part of those**  
 22 **amounts to the repayment of the bonds and may secure the bonds**  
 23 **by a lien on the amounts pledged.**

24       **(b) If the board desires to finance a capital improvement in**  
 25 **whole or in part as provided in this section, it shall adopt a**  
 26 **resolution authorizing the issuance of revenue bonds. The**  
 27 **resolution must state the date or dates on which the principal of the**  
 28 **bonds will mature (not exceeding forty (40) years from the date of**  
 29 **issuance), the maximum interest rate to be paid, and the other**  
 30 **terms upon which the bonds will be issued.**

31       **(c) The board shall submit the resolution to the mayor, who**  
 32 **shall review it. If the mayor approves the resolution, the board**  
 33 **shall take all actions necessary to issue bonds in accordance with**  
 34 **the resolution. The board may, under section 15 of this chapter,**  
 35 **enter into a trust agreement with a trust company as trustee for the**  
 36 **bondholders. An action to contest the validity of bonds to be issued**  
 37 **under this section may not be brought after the fifteenth day**  
 38 **following:**

39       **(1) the receipt of bids for the bonds, if the bonds are sold at**  
 40 **public sale; or**

41       **(2) the publication one (1) time in a newspaper of general**  
 42 **circulation published in the county of notice of the execution**

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1           and delivery of the contract of sale for the bonds;  
2           whichever occurs first.

3           (d) Bonds issued under this section may be sold at public or  
4           private sale for the price or prices that are provided in the  
5           resolution authorizing the issuance of bonds. All bonds and interest  
6           are exempt from taxation in Indiana as provided in IC 6-8-5.

7           (e) When issuing revenue bonds, the board may covenant with  
8           the purchasers of the bonds that any funds in the capital  
9           improvement fund may be used to pay the principal on, or interest  
10          of, the bonds that cannot be paid from any other funds.

11          (f) The revenue bonds may be made redeemable before maturity  
12          at the price or prices and under the terms that are determined by  
13          the board in the authorizing resolution. The board shall determine  
14          the form of bonds, including any interest coupons to be attached,  
15          and shall fix the denomination or denominations of the bonds and  
16          the place or places of payment of the principal and interest, which  
17          may be at any bank or trust company within or outside Indiana.  
18          All bonds must have all the qualities and incidents of negotiable  
19          instruments under statute. Provision may be made for the  
20          registration of any of the bonds as to principal alone or to both  
21          principal and interest.

22          (g) The revenue bonds shall be issued in the name of the city and  
23          must recite on the face that the principal of and interest on the  
24          bonds is payable solely from the amounts pledged to their payment.  
25          The bonds shall be executed by the manual or facsimile signature  
26          of the president of the board, and the seal of the city shall be  
27          affixed or imprinted on the bonds. The seal shall be attested by the  
28          manual or facsimile signature of the controller of the city.  
29          However, one (1) of the signatures must be manual, unless the  
30          bonds are authenticated by the manual signature of an authorized  
31          officer or a trustee for the bondholders. Any coupons attached  
32          must bear the facsimile signature of the president of the board.

33          (h) This chapter constitutes full and complete authority for the  
34          issuance of revenue bonds. No law, procedure, proceedings,  
35          publications, notices, consents, approvals, orders, acts, or things by  
36          the board or any other officer, department, agency, or  
37          instrumentality of the state or any political subdivision is required  
38          to issue any revenue bonds except as prescribed in this chapter.

39          (i) Revenue bonds issued under this section are legal investments  
40          for private trust funds and the funds of banks, trust companies,  
41          insurance companies, building and loan associations, credit unions,  
42          banks of discount and deposit, savings banks, loan and trust and

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safe deposit companies, rural loan and savings associations, guaranty loan and savings associations, mortgage guaranty companies, small loan companies, industrial loan and investment companies, and other financial institutions organized under statute.

Sec. 15. (a) Revenue bonds issued under this chapter may be secured by a trust agreement by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Indiana. Any resolution adopted by the board providing for the issuance of revenue bonds and any trust agreement under which the revenue bonds are issued may pledge or assign, subject only to valid prior pledges, all or a part of the amounts authorized by this chapter, but the board may not convey or mortgage any capital improvement or any part of a capital improvement.

(b) In authorizing the issuance of revenue bonds, the board may:

(1) limit the amount of revenue bonds that may be issued as a first lien against the amounts pledged to the payment of those revenue bonds; or

(2) authorize the issuance from time to time of additional revenue bonds secured by the same lien.

Additional revenue bonds shall be issued on the terms and conditions provided in the bond resolution or resolutions adopted by the board and in the trust agreement or any agreement supplemental to the trust agreement. Additional revenue bonds may be secured equally and ratably without preference, priority, or distinction with the original issue of revenue bonds or may be made junior to the original issue of revenue bonds.

(c) Any pledge or assignment made by the board under this section is valid and binding from the time that the pledge or assignment is made, and the amounts pledged and received by the board are immediately subject to the lien of the pledge or assignment without physical delivery of those amounts or further act. The lien of the pledge or assignment is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the board irrespective of whether these parties have notice of the lien. Neither the resolution nor any trust agreement by which a pledge is created or an assignment need be filed or recorded in order to perfect the resulting lien against third parties. However, a copy of the pledge or assignment shall be filed in the records of the board.

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(d) Any trust agreement or resolution providing for the issuance of revenue bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law. The provisions may include covenants stating the duties of the board in relation to:

- (1) the acquisition of property;
- (2) the construction, improvement, maintenance, repair, operation, and insurance of the capital improvement or capital improvements in connection with which the bonds have been authorized;
- (3) the rates of fees, rentals, or other charges to be collected for the use of the capital improvement or capital improvements;
- (4) the custody, safeguarding, investment, and application of all money received or to be received by the board or trustee;
- (5) the establishment of funds, reserves, and accounts; and
- (6) the employment of consulting engineers in connection with the construction or operation of the capital improvement or capital improvements.

(e) It is lawful for any bank or trust company incorporated under statute, and any national banking association that may act as depository of the proceeds of bonds or other funds of the board, to furnish indemnifying bonds or to pledge securities that are required by the board.

(f) Any trust agreement entered into under this section may state the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of private corporations. In addition, the trust agreement may contain other provisions that the board considers reasonable and proper for the security of the bondholders.

(g) All expenses incurred in carrying out a trust agreement entered into under this section may be treated as a part of the necessary operating expenses of the board.

Sec. 16. (a) The Indiana general assembly covenants with the purchasers of any bonds or notes issued under this chapter that:

- (1) the food and beverage taxes pledged to the payment of those bonds and notes will not be repealed, amended, or altered in any manner that would reduce or adversely affect the levy and collection of those taxes; and
  - (2) it will not reduce the rates or amounts of those taxes;
- as long as the principal of, or interest on, any bonds or notes is

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1 unpaid.

2 (b) The board, on behalf of the city, may make a similar pledge  
3 or covenant in any agreement with the purchasers of any bonds or  
4 notes issued under this chapter.

5 (c) For purposes of this section, the principal of or interest on  
6 bonds or notes is considered paid if provision has been made for  
7 their payment in such a manner that the bonds or notes are not  
8 considered to be outstanding under the resolution, ordinance, or  
9 trust agreement under which the bonds or notes are issued.

10 Sec. 17. (a) A capital improvement may be financed in whole or  
11 in part by the issuance of general obligation bonds of the city.

12 (b) If the board desires to finance a capital improvement in  
13 whole or in part as provided in this section, it shall have prepared  
14 a resolution to be adopted by the fiscal body of the city authorizing  
15 the issuance of general obligation bonds. The resolution must state  
16 the date or dates on which the principal of the bonds is payable, the  
17 maximum interest rate to be paid, and the other terms upon which  
18 the bonds shall be issued. The board shall submit the proposed  
19 resolution to the mayor, together with a certificate to the effect that  
20 the issuance of bonds in accordance with the resolution will be in  
21 compliance with this section. The certificate must also state the  
22 estimated annual net income of the capital improvement to be  
23 financed by the bonds, the estimated annual tax revenues, and the  
24 maximum amount payable in any year as principal and interest on  
25 the bonds issued under this chapter, including the bonds proposed  
26 to be issued, at the maximum interest rate set forth in the  
27 resolution. The bonds issued may mature over a period not  
28 exceeding forty (40) years from the date of issue.

29 (c) Upon receipt of the resolution and certificate, the mayor may  
30 adopt them and take all action necessary to issue the bonds in  
31 accordance with the resolution. An action to contest the validity of  
32 bonds issued under this section may not be brought after the  
33 fifteenth day following the receipt of bids for the bonds.

34 (d) The provisions of all general statutes relating to:

35 (1) the filing of a petition requesting the issuance of bonds and  
36 giving notice;

37 (2) the right of:

38 (A) taxpayers and voters to remonstrate against the  
39 issuance of bonds in the case of a proposed bond issue  
40 described by IC 6-1.1-20-3.1(a); or

41 (B) voters to vote on the issuance of bonds in the case of a  
42 proposed bond issue described by IC 6-1.1-20-3.5(a);

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- (3) the giving of notice of the determination to issue bonds;
- (4) the giving of notice of a hearing on the appropriation of the proceeds of bonds;
- (5) the right of taxpayers to appear and be heard on the proposed appropriation;
- (6) the approval of the appropriation by the department of local government finance; and
- (7) the sale of bonds at public sale for not less than par value; are applicable to the issuance of bonds under this section.

**Sec. 18.** All money received from any bonds issued under this chapter shall be applied solely to the payment of the construction cost of the capital improvement or capital improvements or the cost of refunding or refinancing outstanding bonds or notes, for which the bonds are issued. The cost may include:

- (1) planning and development of the capital improvement and all buildings, facilities, structures, and improvements related to it;
- (2) acquisition of a site and clearing and preparing the site for construction;
- (3) equipment, facilities, structures, and improvements that are necessary or desirable to make the capital improvement suitable for use and operation;
- (4) architectural, engineering, consultant, and attorney fees;
- (5) incidental expenses in connection with the issuance and sale of bonds;
- (6) reserves for principal and interest and for operations, extensions, replacements, renovations, and improvements;
- (7) interest during construction;
- (8) financial advisory fees;
- (9) insurance during construction;
- (10) municipal bond insurance; and
- (11) in the case of refunding or refinancing, payment of the principal of, redemption premiums, if any, for, and interest on the bonds or notes being refunded or refinanced.

**Sec. 19.** Unless their rights are restricted by the appropriate bond resolution, ordinance, or trust agreement, any holder of notes or bonds issued under this chapter or a trustee under a trust agreement entered into under this chapter may, by any suitable form of legal proceeding, protect and enforce any rights provided under statute or granted by the bond resolution, ordinance, or trust agreement.

**Sec. 20.** All property owned or used and all income and revenues

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received by the board are exempt from special assessments and taxation in Indiana for all purposes.

Sec. 21. The board and the state, any department, agency, or commission of the state, or any department, agency, or commission of municipal or county government, may enter into agreements, contracts, or leases with each other on the terms that are agreed upon, providing for joint and cooperative planning, financing, construction, operation, or maintenance of a capital improvement or of the buildings, facilities, structures, or improvements that are necessary or desirable in connection with the use and operation of a capital improvement.

Sec. 22. (a) In anticipation of funds to be received from any source, the board may borrow money and issue notes for a term not exceeding ten (10) years and at a rate or rates of interest determined by the board. The notes shall be issued in the name of the "capital improvement board of managers of Fort Wayne" and may be secured (either on a parity with or junior and subordinate to any outstanding bonds or notes) by:

- (1) the pledge of income and revenues of any capital improvement;
- (2) the proceeds of excise taxes; or
- (3) any other funds anticipated to be received.

The notes are payable solely from the income, excise taxes, revenues, and anticipated funds.

(b) The financing may be negotiated directly by the board with any bank, insurance company, savings association, or other financial institution licensed to do business in Indiana upon the terms and conditions that are agreed upon, except as specifically provided in this section, and may be consummated without public offering. The notes plus interest are exempt from taxation in Indiana as provided for bonds in IC 6-8-5.

Sec. 23. A board established under this chapter may defend any current or former member of the board or its officers, employees, or agents in a claim or suit, at law or in equity, that arises from the exercise of powers or the performance of duties or services for the board or that arises from official acts as a member of the board. The board may indemnify a person for any liability, cost, or damages related to a claim or suit, including the payment of legal fees. Before taking action authorized by this section, the board must, by resolution, determine that the action or conduct in question was taken, done, or omitted in good faith.

SECTION 9. THE FOLLOWING ARE REPEALED [EFFECTIVE

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JULY 1, 2009]: IC 6-9-23; IC 6-9-33-10.

SECTION 10. [EFFECTIVE JUNE 1, 2009] (a) Notwithstanding IC 36-10-15-6, as added by this act, the initial term of the members of the board of managers of the Fort Wayne capital improvement board begins July 1, 2009, instead of January 15. The appropriate appointing authority shall make its appointments before July 1, 2009. These members serve from July 1, 2009, through January 14, 2012.

(b) Before July 1, 2009, the board shall hold an organizational meeting. It shall elect one (1) of the members president, another vice president, another secretary, and another treasurer to perform the duties of those offices. These officers serve from July 1, 2009, through January 14, 2011.

(c) This SECTION expires January 15, 2012.

SECTION 11. An emergency is declared for this act.

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